Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
PHNL030406

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	**Application Number** — 10/554,226 **Filed** — October 25, 2005
on _____	**First Named Inventor**
Signature_____	WILHELMUS J. VAN GESTEL
Typed or printed name _____	**Art Unit** — 2621 **Examiner** — S.Y. Hasan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
        Note: No more than five (5) pages may be provided.

I am the

[ ] applicant/inventor.

[ ] assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

[✔] attorney or agent of record.
Registration number 28,613

[ ] attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

/Edward W. Goodman/
_____
Signature

Edward W. Goodman
_____
Typed or printed name

914-333-9611
_____
Telephone number

August 21, 2009
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

[✔] *Total of 1 forms are submitted.

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8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of   Atty. Docket

WILHELMUS J. VAN GESTEL ET AL.   PHNL 030406

SERIAL NO.: 10/554,226   GROUP ART UNIT: 2621

FILED: October 25, 2005   EXAMINER: S.Y. Hasan

DEVICE AND METHOD FOR RECORDINGH INFORMATION

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

ARGUMENTS

(1)   The Examiner has rejected claims 1-3 and 7-11 under 35

U.S.C. 102(e) as being anticipated by US2005/0015803 to Macrae et

al.

        As described in Applicants' Amendment filed March 6, 2009,

on page 13, line 15 to page 14, line 21, Applicants assert that

Macrae et al. neither discloses nor suggests the claim 1 limitation

"message means for extracting messages from the data stream, the

messages containing the application data objects". In the Final

Office Action, the Examiner first gives a dissertation as to how

claims should be interpreted, and of the meaning of "message".

Further, on page 4, the Examiner describes various configurations

of an interactive television program guide application, that the

program guide application may display a video window containing a

video clip, and that the program guide application may have a service navigation bar allowing the user to navigate to different services. The Examiner then concludes "From the above discussion it becomes clear that the message is being extracted from the data stream and they contain application data objects."

Applicants submit that Macrae et al. merely discloses a generalized input/output (e.g., 58 in Fig. 3, 70 in Fig. 4, 104 in fig. 6, 108 in Fig. 7), a personal computer 98 (Fig. 6) or processing circuitry 110 (Fig. 7) and numerous figures showing exemplary program guide displays. However, Macrae et al. neither discloses nor suggests how the signals get from the input/output to the display, nor that the format of the input signal make it necessary to extract the messages from the data stream which includes real-time information (i.e., the video information). The Examiner is merely assuming that the system of Macrae et al. includes "message means" as claimed in claim 1 based on the description of the program guide application display.

As described in Applicants' Amendment filed March 6, 2009, on page 14, line 22 to page 15, line 27, Applicants assert that Macrae et al. neither discloses nor suggests the claim 1 limitation "parsing means for generating application control information."

In the Final Office Action, on page 5, the Examiner again describes the display and operation of the program guide application and surmises "This clearly illustrates parsing means for generating application control information."

Again, Applicants submit that this is a mere assumption by the Examiner which is not supported by any facts in Macrae et al. While something must be controlling the operation of the program guide application/display, there is no disclosure or suggestion of parsing means (which parses the input data stream) for generating application control information.

As described in Applicants' Amendment filed March 6, 2009, on page 15, line 28 to page 16, line 14, Applicants assert that Macrae et al. neither discloses nor suggests the claim 1 limitation "control means for storing the messages in a message file separate from the real-time information as a series of the messages for the program, and for storing the application control information in a message info file, the application control information including accessing information for accessing the messages in the message file."

In the Final Office Action, on pages 5 and 6, the Examiner again refers to the description in Macrae et al. relating to the program guide application display and the selective displaying of video clips, and then concludes "This demonstrates that the message has to be stored in order to be accessed by the user."

While Macrae et al. does disclose memory for use when executing applications, non-volatile memory for storing boot-up routine or other instructions, and a hard disk for storing databases and video content, there is no disclosure or suggestion of storing the messages in a message file (separate from the real-

time information, and storing the application control information in a message info file.

Applicants would like to note that "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

(2)   With regard to 35 U.S.C. 103(a) rejections of dependent claims 4-6, Applicants do not dispute that Manor et al. and Kostreski et al. arguably disclose the limitations added by these dependent claims. However, when looking at the invention as a whole, i.e., claim 4 depending from claim 1, and claims 5 and 6 depending from claim 4 (and claim 1), Applicants assert that the combination of Macrae et al. with Kostreski et al. and/or Manor et al. fails to disclose the element listed above which are missing from Macrae et al.

In view of the above, Applicants believe that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Respectfully submitted,

by___/Edward W. Goodman/_____
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